



POLICE DEPARTMENT

July 17, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Amanda Pallone  
Tax Registry No. 941355  
103 Precinct  
Disciplinary Case No. 2013-9497

The above-named member of the Department appeared before Assistant Deputy Commissioner Trials Amy J. Porter<sup>1</sup> on March 25, 2014, charged with the following:

1. Said Police Officer Amanda Pallone, assigned to the 103 Precinct, on or about April 23, 2013, [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: during a dispute with Person A, said Police Officer threw a bottle of baby powder towards him. (*Dismissed 3/25/14*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS PUBLIC  
CONTACT PROHIBITED CONDUCT

2. Said Police Officer Amanda Pallone, assigned to the 103 Precinct, on or about April 23, 2013, [REDACTED], failed to notify the Operations Unit of her involvement in an off-duty domestic incident, wherein said Police Officer threw a bottle of baby powder in the direction of her spouse during a dispute. (*As amended*)

P.G. 212-32, Page 1, Paragraph 1 2 NOTE – COMMAND OPERATIONS OFF  
DUTY INCIDENTS INVOLVING  
UNIFORMED MEMBERS OF THE  
SERVICE

<sup>1</sup> Due to the long term absence of Assistant Deputy Commissioner Amy J. Porter, this Report and Recommendation is submitted by Deputy Commissioner – Trials Martin G. Karopkin.

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq., Worth Longworth & London, LLP.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Not Guilty of Specification No. 2. The Advocate dismissed Specification No. 1 on March 25, 2014, due to lack of evidence.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Sergeant Kenneth Russo as its sole witness.

#### Sergeant Kenneth Russo

Russo, a 27-year member of the Department, is assigned to the Queens South Investigations Unit, where he functions as both a supervisor and an investigator. In May 2013, he was assigned to investigate the April 22, 2013 off-duty domestic incident and subsequent arrest of Respondent. Respondent was taken into custody by the [REDACTED] Police Department and charged with menacing.

Russo testified that, on that date, there was a domestic dispute between Respondent and Person A. Russo was not part of the



original call-out, so the information he had on the incident came from typed reports generated by the [REDACTED] Police Department and [REDACTED] Investigations Unit. From reading the reports, Russo learned that the incident originated during a "telephone argument" on April 22, 2013. Respondent and Person A were arguing over his [REDACTED] use of marijuana. At some point hours later, there was "another altercation" between Respondent and Person A that took place inside their home. During this exchange, a "bottle of baby powder was thrown" by Respondent. Subsequently, the [REDACTED] Police responded and placed Respondent under arrest, charging her with menacing. Person A made a statement to the [REDACTED] Police that "he felt in fear of his safety" from the bottle being thrown.

Russo attempted to contact and interview Person A but he "refused to cooperate with the investigation. He didn't want to speak to us any further without an attorney."

Russo was able to speak with Respondent at an official Department interview. She told Russo that after the dispute, Person A left the bedroom and she went back to sleep, not taking any further action. He asked her why "she didn't make a notification." She replied that she "did not believe that the incident rose to the level of necessitating a call to the Department." Russo came to the conclusion that Respondent had an obligation to make a notification to the Department because of her participation in an off-duty "incident involving a domestic dispute".

On cross-examination, Russo testified that Person A never accused Respondent of hitting, striking or threatening him. Respondent also never accused Person A of hitting her, only that "he bumped into her." Respondent never accused Person A of threatening her life.

Russo testified that Person A, in his statement to the [REDACTED] Police, said that the act of the baby powder hitting the wall coupled with Respondent's ability to have access to a firearm put him in fear of his physical safety. However, Person A never alleged that Respondent had the firearm with her, or that she mentioned the firearm, during the incident. At the time, Respondent's firearm was at the 103 Precinct. Respondent said that because she had children, she routinely left her firearm at the stationhouse.

Being both [REDACTED] and a member of the service for 27 years, Russo acknowledged that he has dealt with a multitude of domestic incidents. He recognized that there are times when a domestic incident is just a disagreement and not a criminal matter. He agreed that members of the service can have arguments with their spouses that do not rise to the level of being reported to the Department. Russo said "common sense" should apply as to whether a notification is necessary and that it is a "case by-case" basis as to what is reportable.

Russo testified that it was "a fair assessment" to state that the bulk of the incident between Respondent and Person A was "a disagreement, an argument between the two spouses." Person A never said that the bottle of baby powder hit him or that Respondent hit him with the bottle or anything else. Russo testified that the Patrol Guide is open to interpretation as to when a domestic dispute should be reported.

On re-direct examination, Russo stated that, in his opinion, this matter was a "domestic incident that, you know, wound up ending in her arrest because of the call to the police and the story relayed to the police by Mr. Pallone." In his opinion, the incident required notification to the Department.



On re-cross examination, Russo testified that it was “the response of the police to their residence and [Respondent’s] arrest” that made the incident reportable to the Department. According to Russo, the fact that the police were called made the difference here and “quite possibly,” if Person A had never called the police, the incident would not have been reportable.

Russo testified that the fact that “one of the two parties felt the need to call the police and have them show up” elevated the situation to being reportable. However, he admitted that there was no evidence that after the bottle hit the wall, Person A told Respondent that he was calling the police. Russo said that it was a fair assumption to make that when Respondent walked out of the bathroom and went to bed, she had “absolutely no idea that [Person A] would be calling the police.” In his professional opinion, Russo said that what made the incident reportable, based on the Patrol Guide, was that Person A called the police and that Respondent was arrested.

On continued re-direct examination, Russo testified an officer’s obligation to report a domestic incident falls under a “gray area.” He said that it is difficult to decide at what level the obligation to report begins, but that “most people would err on the side of caution and make the call” and let the duty captain decide if an investigation is necessary. Russo said that there were no injuries in this incident but that because an object was thrown, in his opinion, the incident required notification to the Department.

On continued re-cross examination, Russo testified that the two main factors that necessitated Respondent to notify the Department were Person A calling the police, of which Respondent was completely unaware, and Respondent’s arrest.

Respondent's Case

Respondent testified on her own behalf.

Respondent

Respondent, an eight-year member of the Department, was assigned to the 103 Precinct until her arrest relating to the incident at issue. [REDACTED]

[REDACTED]. Together, they have two children, aged five-and-a-half and three-and-a-half years old at the time of the incident. Person A has two additional older children from a previous relationship.

On April 22, 2013, Respondent's nanny informed Respondent that she found something "suspicious" in the house that might be "marijuana." Just a few days earlier, Person A's [REDACTED] had joined Respondent and Person A in their home. Knowing Person A's [REDACTED] history, Respondent suspected that the substance was in fact marijuana. Respondent called Person A and told him that "his [REDACTED] was bad news and [she] didn't want him staying at the house anymore" because she had two young children and she was a police officer. As a result, Respondent and Person A argued over the telephone.

Later that day, Respondent returned home from work and went to bed around 9:00 p.m. Person A was not home yet. Respondent wanted to "avoid contact" with Person A, so she let their [REDACTED] sleep in the bed with her. Also, before going to bed, she placed Person A's toiletries and "anything he needed for the next morning" outside the bedroom and locked the bedroom door. At some point, she woke up to the sound of Person A "banging" or "knocking" on the door. He somehow unlocked the door and gained access to the room. He did not kick down the door and did not break it in any way.



Once inside the room, Person A called Respondent a few "curse words." Respondent had gotten out of bed and Person A realized that their [REDACTED] was in the bedroom, so they both exchanged words at a "very monotone and low key" level. They were not screaming, yelling, or ranting, and their [REDACTED] did not wake up during the entire incident. Respondent testified that Person A was "aggravated" because in their earlier phone conversation, she had said that she wanted [REDACTED] and that she had locked the bedroom door.

While in the bedroom, Respondent told Person A that she wanted [REDACTED]. She then attempted to enter the bathroom, which was connected to their bedroom through a vanity room. The vanity room had a closet with a door on the left side and a vanity with a mirror on the right side.

Respondent testified that as she tried to walk into the bathroom, Person A blocked her way and they "bumped into each other." She then testified that "out of, you know, frustration," she grabbed a bottle of baby powder from a shelf in the vanity room and tossed it at the closet door. The bottle fell to the ground. Person A was "approximately a foot and a half, 2 feet" away from the closet door when she threw it. The bottle never hit Person A. At that point, Person A said to Respondent "thank you."

Respondent testified that she then went to the bathroom and when she came out, Person A was gone. She went back to bed. During this entire incident, their [REDACTED] and [REDACTED] never woke up.

Respondent testified that, during the incident, Person A never threatened her physically and never struck her. Respondent also never threatened him or struck him. Respondent called the incident a "[d]isagreement and non-understanding of each other."

About an hour and ten minutes later, there was a knock on the bedroom door and it was the [REDACTED] Police Department. Respondent was placed under arrest. Immediately after her release, Respondent hired an attorney [REDACTED]. [REDACTED] After her arrest, Respondent was suspended from the Department for 15 days.

Respondent testified that she is aware that members of the service have to report certain incidents to the Operations Unit. She said that she did not report this incident because "there was no crime committed, first, there was no nobody was hurt, it was just words exchanged at a very low tone and it was just a disagreement. There wasn't anything that put me in my fear, or I felt that I put him in fear that I had to report anything."

Respondent testified that she is 5'4" and weighs 128 pounds. Person A is 6'2" and weighs approximately 225 pounds. She described him as "big."

On cross-examination, she testified that the dispute originated from the phone conversation she had with Person A over his [REDACTED]. It was also at this point that she told Person A she wanted [REDACTED]. Respondent said that there was "no yelling or screaming" during the conversation. Person A returned home about three hours after the phone call.

Upon questioning from the Court, she testified that she wanted to "avoid contact" with Person A because he was not understanding that she wanted his [REDACTED] out of the house. She thought the [REDACTED] was "bad news." However, Person A wanted his [REDACTED] in the house.

On continued cross-examination, Respondent reiterated that she placed his toiletries outside the room, locked the door, and went to bed. She was awoken by the noise of Person A at the door. She was unsure how he gained entry to their bedroom,



but was certain that he “didn’t kick the door open.” At some point after Person A was in the room, Respondent attempted to enter the bathroom. Person A was blocking the entrance and he “bumped into [her] pushing [her] into the baby changing station.” Respondent testified that she was frustrated. She removed a bottle of baby powder and threw it “approximately 2, 2 and a half feet” to the right of Person A where it struck the closet door. Thereafter, he collected his things and left.

Respondent did not believe this was an incident that needed to be reported to the Department “because there was no crime committed.” Further, she testified that she “wasn’t fearful” and had she been placed in fear, she would have left the house with her children.

On re-direct examination, she testified that she did not notice any damage to the bedroom door. She did not see any splintering of wood, broken lock and anything else that would indicate that force was used on the door. She believed that Person A was able to manipulate the lock in order to gain entry into the bedroom. After the baby powder was thrown, Person A did not run away but remained in the room and said “thank you.” Person A did not appear scared in any way.

### FINDINGS AND ANALYSIS

The Advocate, having dismissed Specification No. 1 due to lack of evidence, proceeded to trial on the remaining charge, Specification No. 2. However, to understand this case, it is necessary to review both specifications.

Specification No. 1 deals with one off-duty domestic incident between Respondent and Person A, Person A, on April 23, 2013, inside their home in [REDACTED] [REDACTED] That Specification claimed that Respondent engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department when during a dispute with Person A, she "threw a bottle of baby powder towards him." The Advocate dismissed this charge because Person A, as the complaining witness, refused to cooperate with the Department. Russo, the Advocate's sole witness, testified that he called Person A, who refused "to speak to us any further without an attorney." At the time of trial, Respondent and Person A were in the midst of a [REDACTED].

As will be seen, there are problems with this charge. The first is that while the Advocate admits he is unable to prove Specification No. 1, which is the crux of the incident, he nevertheless went forward with Specification No. 2, which charges Respondent with failing to notify the Operations Unit of her involvement of that incident. That alleged incident was a domestic matter in which it is alleged that Respondent threw a bottle of baby powder in the direction of Person A during a dispute. The Advocate is basically arguing that Respondent failed to notify the Department of an incident that the Advocate did not pursue as misconduct.

It should be noted that, in her testimony, Respondent admitted throwing a bottle of baby powder in the direction of the closet door several feet from Person A. She said this occurred during a dispute in which Person A blocked her path. Respondent testified that the bottle did not hit Person A, and indeed there is no allegation by anyone at any time that it did.



This brings us to the second problem with this case. Specification No. 2 charges Respondent with violating Patrol Guide Section 212-32, Page 1, Paragraphs 1-2. That section of the Patrol Guide deals with the obligation of off-duty uniformed members of the service who are either participants or witnesses to unusual police occurrences. The Note following Paragraphs 1-2 in that section states, in pertinent part, that "*an unusual police occurrence shall include family disputes and other incidents of domestic violence in which the officer is either a participant or a witness,*" and that if the "*incident occurs outside of the City the uniformed member of the service concerned will promptly notify the Operations Unit.*" Patrol Guide Section 212-09 defines an unusual occurrence as "substantially more than an ordinary occurrence because of its seriousness, peculiarities, sensationalism, vastness, differences, newsworthiness, or potential to affect police-community relations involving interracial/ethnic conflict or community unrest."

There is no question that Person A called the local police and they responded about an hour after the incident, which certainly made it a police incident that had to be reported. The problem is that the way the specification is worded, it charges Respondent with failing to report this incident before the police arrived.

Clearly the incident as Respondent described it does not meet the threshold standard set forth in the Patrol Guide.

Russo testified that the Patrol Guide is open to interpretation as to when a domestic dispute should be reported. As a [REDACTED] member of the Department, he recognized that there are times when a domestic incident is simply a disagreement and not a criminal matter. He said "common sense" should apply as to whether a notification is necessary and that it is a "case-by-case" basis as to what is reportable to the



Department. He testified that it is difficult to decide at what level an officer's obligation to report starts.

The Patrol Guide offers some guidance with its definition of a reportable unusual occurrence, which is one that is substantially more than an ordinary occurrence because of its seriousness or peculiarities. For a domestic incident to be reportable, it should be substantially more than an ordinary dispute. Injuries sustained would be one factor to consider. Use of, or the threat to use, a firearm would be another factor.

Here, both Russo and Respondent testified that no one sustained any injuries and no one issued, or carried out, any threats. Both testified that the bottle never hit Person A. Respondent testified that she threw the bottle out of frustration because Person A was blocking her path to the bathroom. Both Russo and Respondent testified that Respondent never mentioned her firearm or threatened Person A with the use of her firearm during the incident. In fact, at the time, Respondent's firearm was at the 103 Precinct, where she safeguarded it because she had young children at home.

Respondent testified that there was no yelling or screaming because both she and Person A were aware that their young daughter was sleeping in their bed and they did not want to her to be awakened, and in fact, she never was. According to Respondent, Person A did not damage the locked bedroom door as he attempted to enter the bedroom. Respondent testified that Person A never threatened her physically and never struck her, and she also never threatened him or struck him. Although Russo testified that Person A, in his statement to the [REDACTED] Police, said that the act of the baby powder hitting the wall coupled with Respondent's ability to have access to a firearm put him in fear of his physical safety that is a subjective conclusion that Person A claimed he had made.

At



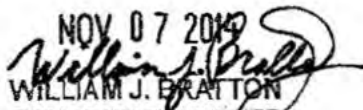
5'4" and about 128 pounds, Respondent said she did not believe that Person A who was 6'2" and about 225 pounds, was scared of her. She testified that she was not scared of him during the incident, which is why she went to bed after he left the bedroom.

The events of that evening, as presented by Russo and Respondent, did not make this incident substantially more than an ordinary dispute between spouses. In that it was not an unusual police occurrence, it did not rise to the level requiring notification.

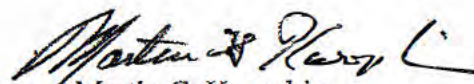
The fact that Person A subsequently reported the matter to the police who responded does make this a matter that had to be reported. Respondent learned that Person A had reported this matter to the police when they arrived at her home. At that time, she was arrested and the matter was reported to this Department, apparently by the [REDACTED] Police Department.

The Department did not charge and did not argue that Respondent failed to report her arrest.<sup>2</sup> This would indicate that, as I have already noted, the alleged failure here is the lack of a report between the time of the incident and the time the police arrived. As has been explained the events that occurred did not constitute a situation where a member of service would be required to report a domestic dispute. Respondent is found Not Guilty of Specification No. 2. As a result it is further recommended that the 15 days Respondent served on pre-trial suspension be restored.

**APPROVED**

NOV 07 2014  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner - Trials

<sup>2</sup> Discussions held before trial indicated that the arrest resulted in an Adjournment in Contemplation of Dismissal and the case was in fact dismissed before this disciplinary trial commenced.